



Washington State
Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

February 25, 2011

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Mr. Dan Mathis, P.E.
Washington Division Administration
Federal Highway Administration
711 South Capitol Way, Suite 501
Olympia, Washington 98501

Re: DBE Certification Program Corrective Action Plan

Dear Mr. *Mathis*:

Thank you for your letter dated February 4, 2011.

That letter listed your concerns regarding the issues raised in our June 23, 2010 Office of Minority and Women Business Enterprises (OMWBE) Program Certification Review. We have prepared the following corrective action plan and are sharing it with you for your comments.

WSDOT's priority is to ensure that we are administering the DBE Certification Program consistent with federal DBE regulations and working collaboratively with OMWBE, as our inter-agency contractor, to provide the best DBE-certification service delivery for firms that want and need to work on highway construction projects.

As you, Mike and Jodi know from our work together to improve DBE Certification processes and compliance, I have asked our OEO staff to work with OMWBE to identify major issues as an "observation" below, followed by the "Recommendation" and "WSDOT Response/ Plan of Action".

- 1) Observation: OMWBE was not previously including DBE application processing performance measures in its Governor's Management and Accounting Program (GMAP) reporting.

Recommendation: OMWBE, at our request, has begun preparations for reporting this information to provide levels of accountability that Acting Director Cathy Canorro and I expect from OMWBE. The new measures that OMWBE is considering are:

- Percentage of certification files complete quarterly within 45/90 days
- Percentage improvement measured quarterly
- Percentage of incomplete files sent back for review prior to final letter
- Percentage of files not upheld in show cause proceedings

- Performance reviews
 - file organization
 - Date Document Received form completely filled out properly

OMWBE's GMAP measures can be found on OMWBE's website at <http://www.omwbe.wa.gov/>. Under our recently-revised performance agreement with OMWBE, OMWBE will also begin providing WSDOT with data regarding DBE application processing, backlog reduction and application processing time. We will also meet with OMWBE regularly to discuss progress in the backlog and any ongoing or developing concerns. This new level of communication is a key to resolving the issues in your letter.

WSDOT Response/ Plan of Action: WSDOT will include this information in its regularly scheduled DBE reports to FHWA. WSDOT is also asking OMWBE to provide monthly reports to WSDOT on:

**Date document received in the office
Date application package is complete
Date certification process is started (Time clock/90 days)**

This information will give us all a clearer picture of the actual DBE application process.

- 2) Observation: Senate Bill 5557 proposes the creation of a statewide Office of Civil Rights.

Recommendation: This new office could consolidate the Governor's three Ethnic Commission and Human Rights Commission with the OMWBE office. DBE certification would still be performed by OMWBE under the UCP agreement by USDOT. The potential combination of these offices may also provide the new agency with the opportunity to enhance the membership of OMWBE's certification committee with Human Rights Commission staff that are both experienced in investigations and knowledgeable in federal and state civil rights law. Key questions need to be answered on staffing and resources for DBE Certification. We will continue to work with OMWBE to assess resource levels.

WSDOT Response/ Plan of Action: WSDOT supports the proposed consolidation and has been assured that OMWBE's core business functions will be retained and that WSDOT's performance measures will be met. WSDOT may request FHWA approval to return DBE certification in-house, if the new agency is not created, or if certification performance does not improve, as expected.

- 3) Observation: New application processing was not being performed in a timely manner. To better assist WSDOT and the DBE community, significant steps need to be undertaken.

Recommendations: To resolve this issue, OMWBE has instituted the following additional quality control measures to reduce file processing time and to ensure a quality determination:

- a. Pre-screen letters have been revised. Applicants are advised that assignments are now timely, assignment of their application is dependent upon receipt of any missing documentation, and failure to provide any missing information will result in administrative closure of their application;
- b. Applications are immediately assigned upon receipt. (During the Review Period, new applications sometimes waited for as long as two months before being assigned to an analyst) ;
- c. Analysts are now contacting applicants within two hours of applicant assignment to notify them;
- d. Analysts conduct "peer review" of eligibility recommendations prior to forwarding recommendations to the certification manager;
- e. Eligibility determinations are reviewed by another manager (non-certification) prior to issuance. The DBE Certification Manager and Assignment Analyst receive immediate feedback about any noted discrepancies. OMWBE's current Interagency Agreement with WSDOT requires OMWBE to seek WSDOT's approval for an extension, a determination will not be made within 90 days;
- f. Income tax returns - (Policy on unsigned tax returns) All applicants for DBE certification execute the Affidavit of Certification stating "material or false statement or omission made in connection with this application is sufficient cause for denial of certification, revocation of a prior approval, initiation of suspension or debarment proceedings, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable federal and state law". Businesses and individuals file their tax returns electronically and/or have them prepared by tax preparers who may only require the taxpayer to sign the original paper return (when a paper return is filed). OMWBE now accepts tax returns that are unsigned by the taxpayer under the following circumstances:

- i. The tax return bears the signature or identifying stamp of the tax return preparer,
- ii. If the tax return was filed electronically, the firm must provide the receipt showing the tax return was electronically submitted to the Internal Revenue Service, or
- iii. There is documentation in the file indicating the tax return was specifically submitted to OMWBE by the firm's tax return preparer, lawyer or other designated agent.

WSDOT Response/ Plan of Action: WSDOT will work closely with OMWBE to ensure these changes are effective. WSDOT will review and track the enhanced application process and report to FHWA any changes/improvement. OMWBE will now devote three full-time analysts to federal DBE certification. WSDOT OEO is working with OMWBE to have an OEO staff member serve as an on-site DBE Liaison. Newly established monthly meetings between the OEO office and the OMWBE DBE Certification Manager will address the issues covered in this corrective action plan. These meetings will allow for an immediate OMWBE/WSDOT response to any certification issues and allow detailed collaboration leading to early, practical and effective solutions.

- 4) Observation: Additional OMWBE staff training could pay dividends later with the growth and development of OMWBE staff members.

Recommendations: Since November 2010, OMWBE has been conducting training for all analysts. The following topics are being covered:

- NAICS code assignment
- Community/separate property documentation
- Calculation of personal net worth
- Ownership
- Control
- Size standards
- Intertwinement
- Eligible persons

WSDOT Response/ Plan of Action: WSDOT agrees that broadening the analysts' scope of knowledge will pay dividends later. WSDOT is working with Joe Austin (USDOT Certification Manager) to provide certification training to OMWBE and OEO staff. WSDOT will invite OMWBE DBE certification staff to participate in Construction Administration training sessions where the OMWBE staff can increase their knowledge of WSDOT

and construction practices. WSDOT will also look for internal trainings/subject matter experts who can assist OMWBE in this matter.

OMWBE also revised its certification workshop for new applicants to include information on how OMWBE assigns NAICS codes, the process for requesting a NAICS code change and the significance of NAICS codes for WSDOT/federally assisted projects. During January, 2011 OMWBE conducted two workshops (43 attendees) specifically on OMWBE's NAICS code assignment process and its significance for WSDOT/federally assisted projects. OMWBE will be scheduling additional workshops on this topic and we will report on those.

- 5) Observation: The WSDOT Certification Review contained many unanswered questions about OMWBE's current onsite review practices. Frequency of on-site visits, documentation of their occurrence and OMWBE's policy on photographs were some of the issues that were not adequately covered in OMWBE files.

Recommendations: OMWBE will make the following changes:

- a. The current interagency agreement specifies that OMWBE shall conduct follow up on-site visits for any Washington-based DBE firm whose onsite review is outdated by more than four (4) years. OMWBE will work with Unified Certification Programs of the firms' home state for out-of-state DBEs to secure on-site reviews that are outdated by more than four years.
- b. On-site visits will be scheduled by first selecting firms that are actively bidding WSDOT highway related construction projects and then prioritizing the visits starting with the most-outdated. This process/timeline will be changed to comply with the final DBE rule published on January 28, 2011. The new regulation provides for submittal of an affidavit by the home state of an out-of-state applicant stating that the facts in its on-site report, which is more than three years old, remain true and correct. (49 CFR 26.85).
- c. OMWBE has started taking photos during all on-site visits. Federal regulations do not require photographs as part of the onsite interview. WSDOT has not previously requested or required OMWBE to include photographs as part of the onsite review. (See FFY 2009 Certification Program Review). OMWBE has previously taken photos, when it would

benefit the eligibility determination. However, there was no previous policy of routinely taking photos for all on-site visits. That's changed.

- d. OMWBE has indicated that OMWBE staff does not always request reimbursement for travel/per diem related to the performance of DBE visits, because of the location of the on-site review. For those visits authorized for reimbursement, a request for reimbursement/travel voucher is now submitted. OMWBE will now annotate the travel vouchers (air, car, per diem) with the DBE file number and/or name of the DBE firm/applicant.

WSDOT Response/ Plan of Action: WSDOT will more closely review the OMWBE on-site review questionnaire containing the information received/acquired by OMWBE during their on-site visits. WSDOT will initiate a quarterly file review and review newly-created files or files where WSDOT has identified concerns.

- 6) Observation: The current DBE Directory has proven confusing to many members of the contracting community.

Recommendations: We agree and hope to solve the problem. WSDOT has developed a listing of all DBEs and the scopes of work that they are currently certified to perform.

WSDOT Response/ Plan of Action: After several meetings, including some with your staff, OMWBE has agreed to install (and FHWA has approved) a link on its website and within its Directory of Certified Firms to the DBE Directory http://www.omwbe.wa.gov/certification/certification_wsdot.shtml. WSDOT has created the Directory and will update every day, in coordination with OMWBE. OMWBE and WSDOT have met and agreed upon a schedule for implementing this feature before March 1.

- 7) Observation: The OMWBE Program Certification Review FFY 2010 has been completed, and will be finalized by March 10, 2011. Additionally, a new Interagency Agreement has been signed by WSDOT and OMWBE.

Recommendations: All parties to these documents need to comprehensively review them to firmly understand the nature of the issues involved and any corrective measures.

WSDOT Response/ Plan of Action: OEO, FHWA, and OMWBE have met to finalize the OMWBE Program Certification Review FFY 2010. Both WSDOT and OMWBE should review the OMWBE Program Certification Review FFY 2010 document to make sure that all discrepancies are

Mr. Dan Mathis
February 25, 2011
Page 7

**discovered and corrective measures implemented prior to March 10, 2011.
Upon approval of this corrective action plan, OEO will work closely with
OMWBE to correct the issues identified and report to FHWA.**

Brenda Nnambi and I will provide a monthly update to you and Mike on our progress to achieve the actions noted in this plan. Thank you for your continued collaboration as we work with you to resolve concerns in the certification program for disadvantaged businesses working on federal highway projects in Washington.

Please call us if you, Mike or Jodi have additional questions or concerns.

Sincerely,



Stephen T. Reinmuth
Chief of Staff
Washington State Department of Transportation

STR:gb/lsh

cc: Brenda Nnambi
Greg Bell
Cathy Canorro